EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: 202-828-2236
A5691.482

RECEIVED

SEP 11 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 11, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

EX PARTE
PRESENTATION

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Mr. Caton:

Communications Central Inc. ("CCI") and Peoples Telephone Co., Inc. ("Peoples" or "PTC") hereby respond to certain claims of MCI and Sprint in their reply comments in this proceeding.

These companies claim that record data on the non-coin revenues of the top three independent public payphone ("IPP") providers proves that additional compensation is not necessary to enable payphone service providers ("PSPs") to recover their costs. Sprint states:

> The RBOC Coalition (attachment at 8-9) asserts that the total embedded direct cost per payphone amounts to $1,744 per year. . . . [A]ccepting that calculation at face value, these costs are far exceeded by the revenues payphone providers can be expected to generate. The RBOC study estimates that PPOs receive $1,647 per year in non-coin compensation (presumably from 0+ commissions). The RBOCs, of course, can be expected to generate similar non-coin revenues when they are allowed to participate in the choice of the presubscribed 0+ carrier. (Moreover, they now receive all 0+ intraLATA calls from their payphones.) In addition, APCC estimates (at 14) that PPOs receive $150 per month, or $1,800 per year. Thus, a typical payphone can be expected to generate $3,447 in revenues for the PSP on an annual basis, a revenue level that is roughly double the RBOCs' estimated costs of $1,744 per year. This is a clear indication that any per call

No. of Copies rec'd 0+1
List ABCDE

> compensation required by this Commission would simply be government largess at the consumers' expense.

Sprint Reply Comments at 16-17. MCI makes a similar argument based on the same data. MCI Reply Comments at 3.

As discussed below, the claims of Sprint and MCI are based on faulty analysis and data and should not be given any weight. The IPP provider revenue data cited by Sprint and MCI is not reliable because Sprint and MCI failed to adjust the data to exclude revenue from sources other than public payphones. Further, the RBOC cost data used is not a reliable indication of public payphone costs. Finally, Sprint and MCI committed the analytical error of making an apples-to-oranges comparison, mixing together revenue data from one group of companies with cost data from a different group of companies, without any attempt to ensure that the same methods are used in each group to define relevant costs and revenues.

The Revenue Data

The numbers used by MCI and Sprint to estimate IPP provider revenues do not provide a reliable estimate of per-station revenues from public payphones. MCI and Sprint used second-hand data from a study conducted by the RBOC Coalition[1] rather than the first-hand data submitted by the IPP providers themselves in this proceeding. See Comments of CCI, Attachment A; Comments of Peoples Telephone Company at 24, Table 4. The RBOC Study attributed to Peoples and CCI total annual non-coin revenues of $1,423 and $2,064 per station, respectively. (These non-coin revenue figures were averaged with Davel's $1,621 per station to reach an average for the group of $1,647 per station.) These non-coin revenues are, however, extremely skewed because they are based on the total gross revenues reported by these companies on their public financial statements for 1995, divided by the average number of all types of telephone stations owned by the companies in 1995. As such, they include non-coin revenues from inmate phone operations that are not comparable to public payphone revenue streams. Thus, while the total revenue numbers are consistent with the public financial data of Peoples and CCI, the numbers cannot validly be used, without significant adjustments, to derive average non-coin per-phone revenue for these companies' public payphones.

---

[1] See Carl R. Geppart, "Calculation of Per-Call Compensation and Review of Accounting and Regulatory Treatment for Payphone Asset Reclassification" (July 1, 1996) ("RBOC Study"), attached to the Comments of the RBOC Coalition. The estimates of IPP provider revenues are found at Exhibit B of the RBOC Study.

In order to derive reliable revenue data for public payphones, the publicly reported numbers must be adjusted to exclude data relating to other sources of income primarily inmate telephone operations. The cost and revenue characteristics of inmate telephones are significantly different from those of public payphones. See Comments of the Inmate Calling Services Providers Coalition. Further, as discussed below, reported revenues from inmate telephones include the gross revenue for long distance and operator charges, rather than the net revenue attributable to inmate telephones. Since more than 50% of CCI's non-coin revenue and more than 40% of PTC's non-coin revenue for 1995 was from inmate telephones, inclusion of non-coin revenues from inmate telephone operations significantly distorts the per-payphone revenue numbers and renders them grossly inaccurate as a portrayal of average payphone revenue from these companies' public payphones.

Second, the numbers used in the RBOC study did not reflect any adjustment of Peoples' or CCI's gross non-coin revenue to reflect the fact that much of this revenue is "gross" rather than "net" operator service revenue. During 1995, both companies themselves provided operator services, either from a switch, on a store-and-forward basis, or on a private brand basis, from a significant percentage of their payphones (including all their inmate telephones). When PSPs themselves offer operator services on one of these bases, their gross revenues reflect the entire retail price of the call, including recovery of all operator service costs (e.g., transmission, validation, billing and collection, etc.). Thus, in these circumstances PSPs' gross revenues are much larger than when PSPs merely receive commissions for operator service calls handed off to another carrier.

When PSP revenues are adjusted to take account of these two factors, they look substantially different on a per-payphone basis. CCI submitted data showing net non-coin revenue[2] from its public payphones (excluding inmate telephones) of about $50 per station per month, or $600 per station per year, rather than the $2,064 per station per year cited in the RBOC study. Comments of CCI at Attachment A. CCI's total (coin and adjusted non-coin) public payphone revenue averages $185 per payphone per month (id.), or $2,200 per year, rather than the $3,447 per year claimed by Sprint. Similarly, Peoples submitted data showing total public payphone revenue of about $238 per payphone per month, or about $2,850 per year (Comments of Peoples Telephone Co. at 24, Table, 4), rather than the $3,447 per year claimed by Sprint.

---

2 Net revenue is a number that is frequently used when the IPP provider itself offers operator services at the payphone or at its own switch. Net revenue represents gross operator service revenue minus the cost of the underlying IXC service, billing, collection, validation, and bad debt.

The Cost Data

The unadjusted IPP provider revenue data was compared with data purportedly representing RBOC payphone costs. As APCC has argued in its reply comments, the RBOC cost figure is not reliable and is likely to understate the true costs of RBOC payphone operations. Reply Comments of APCC at 30. Since the accounting requirements for the RBOCs' payphone operations have yet to be established,[3] it is not possible at this time to determine the amount of costs that will be properly attributable to the RBOCs' payphone operations once those operations have been reclassified and their cost separated from local exchange and exchange access operations. Thus, the RBOC cost study is, at best, a guesstimate of what costs RBOC payphone operations will have to recover once they are required to operate on a stand-alone basis without subsidies from local exchange and exchange access revenues. Given the uncertainties and the inherent ambiguities involved in assessing utility costs, and the wide range of points of view on the proper way to allocate joint and common costs, a wide spectrum of results could be reached depending on the methodology used. And since neither the methodology nor the detailed results of the RBOC cost study have been fully disclosed in this record, it is not possible to fairly evaluate the accuracy of the RBOC cost figures. However, the RBOCs have a strong incentive to underreport their costs at this time because any costs that they acknowledge are attributable to their payphone operations will be required to be removed from their regulated local exchange and exchange access revenue requirements.

A more accurate estimate of payphone costs is provided by the actual costs reported by major payphone companies whose primary business is payphones. These costs are not obscured, as the RBOCs' are, by being intermingled with costs of regulated operations, or subject to the other quantification problems mentioned above. The annual costs of their payphone operations were estimated by CCI and Peoples to be $198 per payphone per month ($2,376 per year) and $265 per payphone per month ($3,180 per year) respectively.[4]

---

[3] See Implementation of the Telecommunications Act of 1996: Accounting Safeguards, Notice of Proposed Rulemaking, CC Docket No. 96-150, FCC 96-309, released July 18, 1996.

[4] The cost difference between these two providers may be attributable to a number of factors, including the higher local call volumes at Peoples' payphones.

Apples-and-Oranges Comparison

Even assuming that RBOC cost figures were reliable, it is in any event improper to compare RBOC cost figures with IPP providers' revenues. This type of apples and oranges comparison is inherently unreliable because of significant differences between RBOC and IPP provider costs and revenues.

As just one example, IPP providers' revenues, even as adjusted above, include the operator service commissions or net revenue received from interLATA operator services. A very large portion of this interLATA commission revenue is then passed on to location providers and appears on the expense side as a commission payment. In the case of Bell payphones, however, interLATA commissions are paid directly by the OSP to the location provider. Thus, those commissions do not appear on the books as a cost incurred by the Bell companies. It is obviously improper to compare revenue figures that include interLATA commission revenue with cost figures that do not include interLATA commission payments.

Even if RBOC cost figures were otherwise reliable and could be adjusted to take account of the inherent difference in cost and revenue characteristics discussed above, Sprint's approach of comparing IPP provider revenues vs. RBOC costs involves other difficulties as well. Sprint itself points out that estimated call volumes for IPP, are substantially higher than estimated call volumes for RBOC payphones. Sprint Reply Comments at 16. If that is correct, then one would expect, other things being equal, average IPP provider costs as well as revenues to be higher than average RBOC costs and revenues, because of the additional costs and revenues involved in serving higher volume payphones.[5] This is another reason why it is most inappropriate for Sprint and MCI to compare revenues from IPP providers' allegedly higher-volume payphones with costs of RBOCs' allegedly lower-volume payphones.

* * *

When an apples-to-apples rather than apples-to-oranges comparison is made, as CCI and Peoples have done in their submissions, using reliable data obtained directly from the companies involved, it is clear that payphone costs are not "far exceeded by revenues."[6]

---

5 The additional per-station costs would include, for example, higher commission payments and network usage costs, more frequent coin collection, etc.

6 The facts speak for themselves. The performance of these companies' stock has reflected their recent financial statements, which show significant losses for both companies.

The current inability of the two largest independent payphone companies to gain revenues sufficient to recover their costs makes it all the more imperative for the Commission to ensure, in this proceeding, that PSPs are "fairly compensated for each and every completed intrastate and interstate call." 47 U.S.C § 276(b)(1)(A).

Sincerely,

Robert F. Aldrich

Robert F. Aldrich

RFA/nw

cc:	J. Muleta	R. Spangler	J. Casserly
	M. Carowitz	R. Baca	K. Gulick
	M. Richards	D. Gonzalez	J. Nakahata